IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.3238 OF 1989

1. Babu Maruti Dukare
2. Burhan Yasin Mulani (Since deceased)
3. Ganpat Sadashiv Teli (Kshirsagar)
4. Prabhakar Tulsiram Palkhe
5. Sou. Ratnamala Prabhakar Palkhe
6. Kum. Sangita Prabhakar Palkhe
7. Kaniklal Jeevanchand Doshi
8. Shrikant V. Jamdar
9. Suresh Ramchandra Palkhe
10. Jagannath Shivram Sutar (Palkhe)
11. Nitin Shankar Arwe
12. Rajendra Shivmurti Arwe
13. Dnyaneshwar Mahadu Phule
14. Shrirang Bhimrao Bansode (Deceased)
15. Ajit Tukaram Mane
16. Baban Maruti Dukare
17. Anil Champatrai Vaidya
18. Vijay Tukaram Mane
19. Smt. Hirabai Tukaram Mane
20. Smt. Janakabai Tukaram Mane
    All residents of Akluj,
    Taluka: Malshiras, District Solapur,
21. Madhukar Genu Chavan
22. Laxman Shankar Chavan
23. Smt. Gajrabai Keshavrao Nimbalkar
24. Dinkar Bhikaji Nimbalkar
25. Vasudeo Ganesh Kurudkar
26. Shankar Dattatraya Kurudkar
27. Shahaji Damu Jadhav
28. Suresh Damodar Jadhav
    Nos.21 to 28 all residents
    of Sawatgavhan, Taluka Malshiras,
    Dist. Solapur.
29. Rajaram Jagannath Shinde
     residing at Mali Nagar,
    Tal: Malshiras, Dist. Solapur. ...Petitioners.

V/s.

1. The State of Maharashtra
   (through the Secretary,
    Revenue and Forest Department,
    Mantralaya, Bombay)

2. The Commissioner, Pune Division,
    Pune.

3. The Collector, District Solapur

4. The Deputy Collector,
Pandharpur Division,
having his office at Pandharpur
Dist. Solapur.

5. The Sub Divisional Officer
Pandharpur,
Dist. Solapur. ...Respondents.

Shri M.L.Patil, advocate for petitioner nos.1,3,4,5,10,11,13 to 15, 17 to 25, 27 and 28.

Petitioner Nos.2,6,7,8,9,12,16 and 29 are served.

Writ Petition stands dismissed against the petitioner no.26.

Shri C.R.Sonawane, A.G.P. for Respondent Nos.1 to 5.

WITH
WRIT PETITION NO.797 OF 1991

Smt. Rajanibai Madhukar Sapkal ..Petitioner

Vs.

1. The State of Maharashtra
Through the Secretary,
Revenue and Forest Department,
Mantralaya, Bombay.

2. The Commissioner,
Pune Division, Pune.

3. The Collector of Solapur,
District Solapur.

4. The Sub Divisional Officer,
Pandharpur Division,
Pandharpur, Dist. Solapur.

5. Gopal Dattatray Kurudkar

6. Shivdas Shankar Kurudkar

7. Namdeo Shankar Kurudkar

8. Hari Shankar Kurudkar

9. Bandopant Shankar Kurudkar

10. Miss Bhivara Ganesh Kurudkar

11. Smt. Gangubai Ganesh Kurudkar

12. Vithal Ganu Chavan

13. Madhukar Ganu Chavan

14. Sambhaji Damu Jadhav

15. Shahaji Damu Jadhav

16. Yashwant Narayan Kurudkar

17. Trimbak Vithal Kurudkar

18. Bindumadhav Vithal Kurudkar

19. Ramkrishna Vithal Kurudkar

20. Vasudeo Ganesh Kurudkar

21. Suresh Damu Jadhav

22. Prabhakar Tulshiram Palkhe

23. Ganpat Sadashiv Kshirsagar (Teli) ...Respondents.

Nos.5 to 15 and 20 to 21 all are
residing at Sawa Gavan
Nos.16 to 19 and 22 and 23
all residing at Akluj
Tal: Malshiras, Dist. Solapur.

Shri V.A.Thorat, the Senior Counsel with Vineet B. Naik for the petitioners.
Shri C.R.Sonawane, AGP for the respondent nos.1 to 4.
Shri M.L.Patil for respondent nos.5 to 23.

WITH
WRIT PETITION NO.798 OF 1991

Shri Madhukar Sadba Shivarkar ..Petitioner.
V/s.

1. The State of Maharashtra
Through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.

2. The Commissioner,
   Pune Division, Pune.

3. The Collector of Solapur,
   Dist. Solapur.

4. The Sub Divisional Officer,
   Pandharpur Division, Pandharpur,
   Dist. Solapur.

5. Mallikarjun Digambar Adane

6. Janardan Sambhaji Pawar

7. Prabhakar Tulshiram Palkhe

8. Ganpat Sadashiv Kshirsagar ...Respondents.
   All residents of Akluj,
   Tal: Malshiras, Dist. Solapur.

Shri V.A.Thorat, the Senior Counsel with Vineet B. Naik for the petitioners.
Shri C.R.Sonawane, AGP for the respondent nos.1 to 4.
Shri M.L.Patil for respondent nos.5 to 8.

WITH
WRIT PETITION NO.799 OF 1991

Prabhakar Mahadeo Shinde ..Petitioner

V/s.

1. The State of Maharashtra
   Through the Secretary,
   Revenue and Forest Department,
   Mantralaya, Mumbai.

2. The Commissioner,
   Pune Division, Pune.

3. The Collector of Solapur,
   Dist. Solapur.

4. The Sub Divisional Officer,
   Pandharpur Division, Pandharpur,
   Dist. Solapur.

5. Chandshah Kasimshah Kazi
   residing at Kazi Galli,
   At Post Akluj, Dist.Solapur.

6. Sudarshan Bhaichand Gandhi

7. Vijaykumar Bhaichand Gandhi
Nos.6 and 7 residing at
Shivapur Peth, at Post Akluj,
Dist. Solapur.

8. Shree Maruti Dev Trust, Akluj
through Ganpat Sadashiv Kshirsagar
as one of the trustees,
At Post Office Akluj,
Dist. Solapur.

9. Prabhakar Tulshiram Palkhe
Near Mahatma Theatre, At Post
Akluj, Dist. Solapur.

10. Ganpat Sadashiv Kshirsagar (Teli)
Azad Chowk, At Post office Akluj,
Dist. Solapur. ..Respondents.

Shri V.A.Thorat, the Senior Counsel with Vineet B. Naik for the petitioners.
Shri C.R.Sonawane, AGP for the respondent nos.1 to 4.
Shri M.L.Patil for respondent nos.5 to 10.

WITH
WRIT PETITION NO.800 1991

Suvarna Vijayrao Raskar ...Petitioner.

V/s.

1. The State of Maharashtra
Through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.

2. The Commissioner,
Pune Division, Pune.

3. The Collector of Solapur,
Dist. Solapur.

4. The Sub Divisional Officer,
Pandharpur Division, Pandharpur,
Dist. Solapur.

5. Gopal Dattatray Kurudkar

6. Shivdas Shankar Kurudkar

7. Namdeo Shankar Kurudkar

8. Hari Shankar Kurudkar

9. Bandopant Shankar Kurudkar

10. Miss Bhivara Ganesh Kurudkar

11. Smt. Gangubai Ganesh Kurudkar

12. Vithal Ganu Chavan

13. Madhukar Ganu Chavan

14. Sambhaji Damu Jadhav

15. Shahaji Damu Jadhav

16. Yashwant Narayan Kurudkar

17. Trimbak Vithal Kurudkar

18. Bindumadhav Vithal Kurudkar

19. Ramkrishna Vithal Kurudkar

20. Vasudeo Ganesh Kurudkar

21. Suresh Damu Jadhav

22. Prabhakar Tulshiram Palkhe

23. Ganpat Sadashiv Kshirsagar (Teli) ..Respondents.

Nos.5 to 15 and 20 to 21 all are residing at Sawa Gavan
Nos.16 to 19 and 22 and 23 all residing at Akluj
Tal: Malshiras, Dist. Solapur.

Shri V.A.Thorat, the Senior Counsel with Vineet B. Naik for the petitioners.
Shri C.R.Sonawane, AGP for the respondent nos.1 to 4.
Shri M.L.Patil for respondent nos.5 to 23.

CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.
RESERVED ON: 27th November, 2006.
PRONOUNCED ON: 22nd December, 2006.

JUDGMENT: (Per J.H.Bhatia, J.)

1. All these writ petitions may be disposed off by the common judgment as they arise out of the same facts and circumstances.

2. To state in brief, Saswad Mali Sugar Factory Limited, Malinagar, Taluka:Malshiras, District Solapur was registered under the Companies Act sometimes in 1932-33. All the shares of the company were held by its founders, namely, Narayanrao Sopanrao Borawake, Bhagwan Maruti Jadhav and Haribhau Balwantrao Girme and their close relatives. Haribhau Balwantrao Girme was the Managing Director of the company from 1958 onwards. The company was registered with an object to start a factory for the manufacture of sugar. The company purchased about 1500 to 1600 acres of perennially irrigated land at Akluj, Bijwadi, Tambave and Mahalung villages in Malshiras Taluka. During the period from 1932 to 1940, the company also took on lease under registered lease deeds about 5000 acres of land from the owners in the aforesaid four villages. This was also perennially irrigated land and it was owned by about 200 to 250 farmers. After purchasing and taking lands on lease as stated above, the company created 125 subleases either

in favour of the directors or shareholders of the company. The Board of Directors used to decide about the creation of such subleases year to year but for a period of 11 months only. Every year the decisions were communicated to the concerned Talathis and names of the sub-lessees were recorded in the relevant records. Each of the sub-lessees was holding the land between 50 to 500 acres of irrigated land. The existence of 125 sub-lessees with their respective holdings continued till 26.1.1962.

3. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 was enacted and came into force with effect from 26-1-1962. Under this act, certain limit was put on the agricultural holdings of individuals as well as families. The agricultural land held by any individual or family more than the ceiling limit was to be declared as a surplus and was to be distributed as per the scheme under the said Act. Under Section 12, a person or a family unit holding land in excess of the ceiling area was required to submit returns. The cut off date was 4th August, 1959 for the purpose of determining as to whether a person was holding any land in excess of the ceiling. The directors and shareholders of the said company were holding huge area of agricultural land while the ceiling was only 18 acres

in the case of irrigated land. In view of this if the true returns would have been submitted by the said company and 125 sub-lessees of the company, huge land would have been declared as a surplus land and it would be either restored back to the original land holders or would be distributed among the landless people as per the scheme of the Act. However, to avoid declaration of such surplus land, the directors and shareholders and office bearers of the company and its employees and some talathis working in the Revenue Department prepared false records by forging and manipulating records with an intention to show that besides the company, there were in all 384 lessees and sub-lessees. These persons included 125 persons who were sub-lessees. For the long term as per the practice, Lavan Chithhis (Cultivation Chits/Slips) were prepared every year and its record was maintained in the register of the company and also entries of such sub-lessees or lavanchitthis were taken in the records maintained by the Revenue Department. However, lavanchitthis and lavanchitthis' registers for the years 1959-60, 1960-61 and 1961-62 were destroyed. False and bogus lavanchitthis were prepared to show that there were 384 sub-lessees. Accordingly, the false lavanchitthi registers were prepared. Entries in the revenue records were also manipulated and forged to support this. The intention was that the land in

possession of 125 sub-lessees should not be declared as a surplus land and was not required to be surrendered to the Government under the Act. Having prepared fraudulent, bogus and fabricated records, the returns were submitted.

4. Sometimes in 1964, the original land holders, from whom the lands were taken on lease by the company, came to know about such fraud and they started making complaints to the Government and to the Anti Corruption Bureau (for short 'A.C.B.'). In 1964 itself, the A.C.B. took up the investigation and seized records. But sometime in 1970 oral directions were given by the Government to the A.C.B. to stop the investigations. However, the A.C.B. went on insisting the Government to permit them to investigate and finally in 1974, the Government permitted the A.C.B. to carry on investigations. After investigation, charge-sheets were filed against the directors and employees of the company, sub-lessees of the company and the beneficiaries of such manipulation and some revenue officers under Sections 466, 468, 471, 477(a), 120(b) and 109 of the Indian Penal Code. On the basis of these charge-sheets Criminal Case nos.2, 5, 6 and 7 of 1975 were filed. All these cases were tried by the Special Judge, Solapur and the accused persons were convicted

and sentenced for different offences. All the accused persons preferred criminal appeals against the convictions in the year 1977. Those appeals were disposed off by four different judgments, one each for the original criminal case. In the appeals, the High Court also found that that the offences of fraud and forgery were committed by the directors of the company in collusion with and with the assistance of some employees of the company and of the Revenue Department. Most of the convictions were maintained. However, some of the beneficiaries were acquitted on the ground that they were possibly not having knowledge or intention to commit the crime though they were signatories to the returns and the documents prepared for that purpose. The accused persons preferred Special Leave Petitions against dismissal of their appeals. Special Leave Petitions also came to be dismissed by the Supreme Court.

5. The judgments in appeals were delivered from February to April, 1985. The said judgments were forwarded to the Government by the A.C.B. pointing out the findings of the Court about the fraudulent declarations made by the accused persons in the proceedings under the Ceiling Act with a request to make enquiry and take appropriate action. On 21-10-1986, the

Government forwarded judgments in appeal to the Collector for the appropriate enquiry and to take an action to determine as to what would be the surplus land in these cases. Initially, the Collector directed enquiry into 4 original Khatas which were fraudulently converted into 44 bogus Khatas or accounts. Therefore, the original land holders (Khatas) made representation to the Government and the A.C.B. to make enquiry about all the land holders and occupants pertaining to whole of about 6,000 acres of lands. On 15-3-1988, the A.C.B. submitted three lists of the bogus Khatas which covered almost the entire land. On 7-8-1989 the Government directed the Sub Divisional Officer, Pandharpur to make enquiry under Section 14(4) of the Ceiling Act pertaining to the list of 30 persons. On 31-10-1989 two orders were issued by the Government in respect of the land holders stated therein and the lands held by them in Ahmednagar and Solapur Districts.

6. The above facts gave rise to the present petitions. Writ Petition No.3238 of 1989 is filed by Babu Maruti Dukare and 28 other persons. All these petitioners claimed to be original land holders or their decendents entitled to retain the land in view of the provisions of the Ceiling Act. They appear to be victims of the fraud and forgery committed by the

directors, shareholders, their relatives and employees of the company. By this writ petition, they sought directions to the Government to appoint an officer on special duty, who is not below the rank of the Collector, to re-enquire and re-investigate the ceiling cases which were ordered to be re-opened by the Government of Maharashtra. They further sought direction to the Government to forthwith send back all the relevant records to the Enquiry Officer. They also sought direction that such officer on special duty should complete enquiries and pass final orders under the Ceiling Act within a period of six months or within such a period as this Court may deem fit.

7. Writ Petition Nos.797, 798, 799 and 800 of 1991 are filed by the persons who claim to be the sub-lessees of the lands and who are likely to be adversely affected by the orders passed by the Government for fresh enquiry under Sections 14(4) of the Ceiling Act. Their main contention is that in all these matters, returns were submitted and enquiries were completed and appropriate orders were passed by the concerned Tehsildar. Not only this against the said orders, some appeals were also preferred and those appeals were also dismissed by the concerned appellate authority way back in 1977 and these orders passed under the Ceiling Act had become final.

It is contended that the Government could not give directions to re-open these cases almost 12 years after the decision had become final. Such direction by the Government was barred by the limitation and the Government could not legally give such directions. Therefore, these petitioners seek to quash the orders passed by the Government on 21-10-1986, 23-6-1988, 7-8-1989 and 31-10-1989.

8. The facts stated above are not in serious dispute. It is a matter of record, which is not controverted, that the company had purchased 1500 to 1600 acres of perennially irrigated land and it had also taken about 5,000 acres of land on lease from about 200-250 land holders of 4 different villages. As the company had taken this land for the purpose of production of sugar-cane, which could be used as a raw material in the factory, it was not feasible for the company to cultivate whole of the land itself. Therefore, barring the actual possession and cultivation of 600 acres of land out of about 6500 acres of land, the remaining land was given by this company to 125 sub-lessees. Every year by passing resolutions, the Board of Directors of the Company used to sublease the land to same sub-lessees. However, every time, the agreement was for 11 months only. This continued upto

1962. When the Ceiling Act came into force in 1962 and the cut off date for submitting returns of holdings was declared to be 4-8-1959, these sub-lessees who were either the directors or shareholders of the company or the relatives found themselves in difficulty and immediate danger of their holdings being declared as surplus, as each of them was holding between 50 to 500 acres land while the ceiling for irrigated land was only 18 acres. Taking into consideration 125 sub-lessees, the company and its sub-lessees could retain not more than 2250 acres of land and the remaining about 3750 acres of land would be liable to be declared surplus and such surplus land could be restored back to the landholders who were holding within the limit of ceiling in view of Section 19 of the Ceiling Act and the remaining surplus land could be distributed among the landless persons or could be utilised for other public purposes. In view of the imminent danger of about 3,750 acres of land being declared surplus, the directors, shareholders and employees of the company as well as some employees of the Revenue Department destroyed the records for the period from 1959 to 1962 and on the basis of forged and fabricated documents prepared a false record and destroyed and altered the original lavanchitthis registers as well as the revenue records.

9. There is no dispute that in all 384 persons claiming to be the sub-lessees of the company submitted their returns under the Ceiling Act and after enquiry under the provisions of Section 14 of the Ceiling Act , holdings of all those persons were declared to be within ceiling limits and no land was declared surplus. It is also admitted fact that the appeals were preferred in some of the matters and those appeals were also dismissed in the year 1977. Therefore, the beneficiaries of the said orders claimed that this enquiry about surplus land is already completed and has achieved finality. According to them, the Government could not give suo-motu direction to the Collector to re-open the enquiries for two reasons. Firstly, against the order of the Tribunal/ Additional Tehsildar, appeals were preferred and the appeals were dismissed. When the appeals were preferred and the same were dismissed, the Government can not suo motu re-open the cases and secondly, if appeal is not preferred then the State can suo-motu call the records and to satisfy itself about the legality or propriety of such orders, within a period of 3 years after the determination or completion of enquiry or proceeding under Section 21. It is contended that in view of the provisions of Section 45(2) neither the State Government could suo-motu give such directions nor such directions could be given

beyond a period of 3 years after the decision had attained finality. On behalf of the original landholders, it is contended that the orders passed by the revenue authorities under the Ceiling Act were based on forged and fabricated records and were a result of fraud played by such beneficiaries on the revenue authorities and, therefore, such decisions based on the fraudulent acts, forged and fabricated documents are nullity and are liable to be set aside. It is also further contended that restrictions provided by Section 45 of the Ceiling Act on suo-motu revisional power of the Government cannot be applicable where a fraud was committed and fraudulently orders were obtained. According to them, the Government could direct re-opening of the enquiries when it was brought to its notice that the orders were obtained by playing fraud on the basis of forged and fabricated records.

10. Mr.Thorat, the learned senior counsel for the beneficiaries or petitioners in Writ Petition Nos. 797, 798, 799 and 800 of 1991 vehemently contended that powers of suo motu revision under Sections 45 of the Ceiling Act could be exercised within the limits prescribed therein and in support of this contention, he placed reliance upon Behram Sheriar Irani v. The State of Maharashtra & Anr. 2001 Volume 103(1) Bombay Law

Reporter 31. In that matter, the Additional Commissioner had invoked suo-motu revisional power under Section 45(2) about a period of 10 years after date of order of the Tribunal under the Ceiling Act. It appears that in the said matter, Tehsildar who was also the chairman of the Tribunal had alone signed the order declaring that the petitioner was not holding any surplus land. Only because the order was not signed by all the members of the Tribunal, the Additional Commissioner invoked the suo-motu revisional powers, after a period of about 10 years declaring that certain land was surplus. The learned Single Judge of this Court held that in view of an earlier authority of this Court to the effect that decision signed by the Chairman alone is also a valid decision and not nullity, there was no existing ground to invoke suo-motu powers after lapse of about 10 years from the date of the order of the Tribunal. Mr.Thorat also placed reliance upon Automotive Research Association of India v. State of Maharashtra and others 2003 (1) Maharashtra L.J. 604. In that matter, certain lands held by Dnyanoba Baban Mokate were found surplus under the Urban Land (Ceiling & Regulation) Act and his application for exemption of these lands from the provisions of the Urban Ceiling Act was rejected on 31-3-1997. Against such decision, appeal could be preferred within 30 days. However, no

such appeal was preferred and in 1984 cabinet resolved to allot the said land to the petitioners and they were put in possession of the same. In September, 1998, one of the respondents claiming to be legal heirs of Dnyanoba made an application to the Government to invoke revisional powers and set aside the order of 1977. In the said matter, this Court found that the petitioners were already in possession of the land for about 17 years and in such circumstances, revisional powers could not be invoked after a lapse of such a long period even though no period of limitation was prescribed under Section 34 of the Urban Ceiling Act for the purpose of invoking revisional power. In Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim (1997) 6 Supreme Court Cases 71, the matter under the Bombay Tenancy and Agricultural Lands Act, 1976, it was held that powers of suo motu enquiry could be exercised within a reasonable time when no time limit is prescribed for exercise of such power under statute.

11. Mr.Patil, the learned counsel for the landholders who are petitioners in Writ Petition No.3238 of 1989 vehemently contended that the beneficiaries of the conspiracy and fraudulent acts can not be allowed to retain the fruits of the crimes committed by them. According to him the orders obtained by them by

committing fraud and by making use of forged and fabricated records are non-est. According to him even though in 1964 itself, several complaints were made by the landholders about such forgeries and frauds, the Anti Corruption Bureau took a long time to complete the investigation and to put up the charge-sheets before the Special Judge and after the convictions in the Trial Court, the accused beneficiaries preferred appeals before the High Court and the High Court decided the appeals from February to April, 1985. Then the convictions or the allegations made by the prosecution about frauds, forgeries had become final. This happened only after 1985. The Government of Maharashtra was moved by the A.C.B. itself to re-open the enquiries and, therefore, from 1986 to 1989 the impugned order were passed by the Government to re-open the enquiries. To support his contentions about such conspiracy, Mr.Patil took us extensively through the judgments in criminal appeals particularly about the circumstances in which the offences were committed and delay was caused. Some observations made by the learned Judge of this Court in Criminal Appeal No.783 of 1977 may be quoted here as follows:

> "(4) If the case made out by the prosecution is accepted (and it has been accepted by the Trial Court and it has been held proved by this

> Court apart from being, for all practical purpose, totally conceded in this Court by each counsel arguing for each of the appellants so far as the existence of the conspiracy is concerned) it was an ingenious as well as integrated comprehensive conspiracy involving three categories of conspirators :-
>
> (a) the leaders;
>
> (b) the beneficiaries and
>
> (c) the actual perpetrators, doing the reprehensible work of committing forgery in respect of the factory record and the revenue record.....
>
> .... But not only that they master-minded the conspiracy but, when they learned that it was detected, pulled wires in the right quarters, at the bureaucratic and possibly the ministerial level so that the prosecution of the offenders was delayed for a period of 10 precious years, to a point of time beyond their own life time, thus succeeding in their escape from the arms of law. By the time the prosecution got going, most of them were dead and gone.....
>
> ..... The benefits of the conspiracy were mighty precious. But all those benefits went to the old oak chest of the Managing Director, the directors and other members of the factory and of the relatives, including the beneficiary accused.

5. The Prosecution case, in short, is that all the accused of these 3 categories entered into a conspiracy and manipulated the records. In other words, to forge and fabricate the factory record and the revenue record in such a manner as to nullify the unpalatable effect of the traumatic provisions of the Ceiling Act. The conspiracy pertain to different but large area of lands, all held by the factory and all let out to its various members. The conspiracy, as alleged, was, however, one and the same integrated comprehensive conspiracy."

> "(19)... According to the prosecution, what was done by all the conspirators, alive or dead, (or by some of them in conspiracy with some third person) was that the original

lavanchitthis (rent-notes) executed by those Girmes, Boravake and Jadhavs for the two crucial years were destroyed sometimes after 3-1-1961 (when the bill in respect of the Ceiling Act was notified) and anti-dated lavanchitthis were got signed from all these beneficiaries accused sometime after April or May 1961 showing as if they were the factory's tenants for some portion of the land in these two crucial years. Execution of such anti-dated lavanchitthis, is, according to the prosecution, the gist of the forgery of this factory record.

The part ascribed to each category of the accused in this behalf is that-

(a) The factory employee-accused filled in the blanks in the printed forms of the new lavanchitthis used for the forgery;

(b) The beneficiary accused signed those filled in or blank forms, knowing full well that what they were signing were the anti-dated (and, hence, forged) lavanchitthis;

(c) The factory-employee accused committed forgery in respect of the entries in the Revenue Record in respect of the years 1959-60 and 1960-61. The relevant original pages of the Record of Rights Register showed Boravakes, Girmes and Jadhavs to be the lessees of the factory during the relevant years 1959-60 and 1960-61 in respect of the relevant lands. In their place, the conspirator wanted the names of the relevant beneficiaries- accused to be substituted retrospectively.

This was done by the factory-employee accused, with the connivance of the talathi-accused, upon the instigation of the pilots and navigators and of the beneficiary accused in one of the two ways.

(a) The relevant pages of some of the Record of Rights Registers just for the years 1959-60 and 1960-61 bearing original entries in favour of Boravake, Girmes and Jadhavs were torn off; those pages were substituted by the fresh blank pages and on those substituted pages, convenient entries in favour of the relevant beneficiaries were made sometime after April, 1960.

> (b) In some other cases, the original inconvenient entries in favour of Boravake, Girmes on Jadhavs as the case might be, were rubbed off and thereafter, on the rubbed off portion convenient entries in favour of the relevant beneficiary accused were made.
>
> With the aid of these concocted entries in these fabricated registers, a new picture was brought into being in the year 1961-62 that the beneficiary accused were the lessees of the factory for the relevant land right from the year 1959-60."

The learned Judge also observed that

> "25.....All the beneficiary accused admitted their signatures on the lavanchitthis (rent-notes) which have been found by the lower Court to be anti-dated and forged. But when the explanation was asked in that behalf by way of a general question, most of the beneficiary accused stated that they would like to file their own written arguments. Most of them filed their written statements. I will have occasion to deal with the contents, merit and significance of the written statements separately. Here it may be stated that even in the written statement the factum of forgery of the lavanchitthis is not denied, nor is the factum of the forgery of the relevant portion of the revenue record denied."

12. In view of the circumstances noted above, even the learned counsel for the accused persons had to concede that forgery of revenue and other records was committed. The learned judge observed as follows:

> "28.....I personally satisfied myself about the massive forgery by perusing each of the relevant documents. And in fairness to each of the Counsel, I may state that lukeworm

> though was their initial challenge to the lower Court's finding of forgery, even that pretence of the challenge was in fact candidly given up by all the learned Counsel and the Advocates for the defence immediately when the entire evidence in that behalf was perused and examined by me."

13. Mr.Patil, the learned counsel vehemently contended that once it is established that the orders passed by the revenue authorities on the returns of the petitioners and other beneficiaries whether in original enquiry or in appeal were based on the fraud played on the revenue authorities and the forged and fabricated documents, such orders will have to be treated as nullity and in support of this, he placed reliance upon several authorities.

14. In **S.P.Chengalvaraya Naidu v. Jagannath AIR 1994 Supreme Court 853,** the Supreme Court observed as follows:

> "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eyes of law . Such a judgment/decree - by the first court or by the highest court - has to be treated as nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

> **7. ..... "The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court....."**

In Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers (1992) 1 Supreme Court Cases 534, the Supreme Court held that **the fraud and collusion vitiated even the most solemn proceedings in any civilised system of jurisprudence. In United India Insurance Company Limited v. Rajendra Singh (2000) 3 Supreme Court Cases 581,** Their Lordships **observed as follows:**

> **16. "Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."**

15. Mr.Thorat, the learned Senior Counsel contended that the orders which have attained finality under the Ceiling Act, could not be set aside and ignored as void or non-est unless they were declared to be void by the competent authorities as per the prescribed procedure of law. In support of this, he relied upon the following observations of the Supreme Court in M.Meenakshi and Others v. Metadin Agarwal And Ors. (2006) 7 Supreme Court Cases 470.

> ".....that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities."

16. It may be noted that in the present case merely because in criminal court, it was established that the orders were secured by the accused and other beneficiaries by playing fraud and with the help of forged and fabricated documents, the Government has not jumped to take forcible possession of all the lands from the petitioners and other beneficiaries. The Government has infact directed the Deputy Collector to hold the

enquiries afresh under Section 14 of the Ceiling Act. Apparently, the Government has exercised suo-motu revisional powers under Section 45(2) of the Ceiling Act. The enquiry will have to be made afresh as per the procedure laid down from Sections 14 to 21 and the concerned beneficiaries will be entitled to appear and get an opportunity of being heard before any final orders are passed again. Section 45 of the Ceiling Act reads as follows:

"45. (1) In all matters connected with this Act, the State Government shall have control the same authority and control over the officers authorised under Section 27, the Collectors and the Commissioners acting under this Act, as they do in the general and revenue administration.

[(2) The State Government may, suo motu or on an application made to it by the aggrieved person, at any time, call for the record of any inquiry or proceedings under Sections 17 to 21 (both inclusive) 2* * * for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings (or any part thereof) under those sections 3* * * and may pass such order thereon as it deems fit, after giving the party a reasonable opportunity of being heard]:

Provided that, nothing in this sub-section shall entitle the State Government to call for the record of any inquiry or proceedings of a declaration or part thereof under section 21 in relation to any land, unless an appeal against any such declaration or part thereof has not been filed within the period provided for it 4* * * * and a period of three years from the date of such declaration or part thereof has not elapsed.

5[Provided further that, no order shall be passed under this section so as to affect any land which is already declared surplus and distributed according to the provisions of this Act:

Provided also that the revisional jurisdiction under this section shall be exercised only where it is alleged that the land declared surplus is less than the actual land which could be declared surplus.]

(3) The State Government may, subject to such restrictions and conditions as it may impose by notification in the Official Gazette, delegate to the Commission the power conferred on it by sub-section(2). 6[of this section or under any other provisions of this Act except the power to make rules under section 46 or to make an order under section 49].

It is true that the first proviso to Section 45(2) provides that the suo motu revisional powers shall not be invoked unless appeal against a declaration under Section 21 has not been filed within a period provided for it and that a period of 3 years from the date of such declaration has not lapsed. It means that if appeal is preferred, revisional powers will not be invoked. Further if the period of 3 years has lapsed after the declaration under Section 21, the State shall not exercise revisional jurisdiction. It means that there is a limitation of 3 years. In view of this proviso, Mr.Thorat contended that in the present matters, appeals were preferred by the State and they were rejected in 1977 and secondly a long period of 10 to 12 years had lapsed even after the appeals were dismissed. and before the Government issued directions in 1986 to 1989 for re-opening the cases and therefore, the directions given by the Government are liable to be set aside.

17. **The very question under the Ceiling Act was before the Supreme Court in State of Maharashtra v. Rattanlal AIR 1995(1) Bombay C.R.177**. After reproducing and discussing the provisions of Section 45 of the Ceiling Act, Their Lordships observed as follows:

> **".....The exercise of such a power has been restricted only to the matters relating to an inquiry or proceedings under Ss.17 to 21 (both inclusive). It also prescribed 3 years limitation for the exercise of the revisional power. Before exercising the revisional power the affected party shall also be given reasonable opportunity of being heard. It would be open to the State Government or its delegate to correct any illegality or impropriety committed by the officer or authority. The obvious intendment in conferring suo motu power is to prevent suppression of the inclusion of all agricultural lands held or includible in the holding of the declarant and he/she cannot fall back upon the orders or proceedings as a defence to plead his/her own fraud or suppression of material facts in his/her declaration or the designated officer or authority cannot seek shelter under the orders or a part thereof when the offending order was steeped with illegality or impropriety. Take a hypothetical illustration that the landholder and the officer colluded and in furtherance thereof several lands were not declared in the declaration. The authorised officer declared him to be within the ceiling limit. The suppression of material facts, namely, existence of the undeclared agricultural land had come to the knowledge of the higher authorities after a long lapse of time,. Should it be that limitation of three years would be a bar to exercise suo motu power of a order passed under S.17 to 21 a bar to reopen the case. Obviously the answers are no. The**

> limitation would start running only from the date of discovery of the fraud of suppression of material or relevant facts or omission thereof and the order under S.17 is not a bar to exercise revisional power. Take another illustration that in an inquiry or proceedings a land which is declared surplus but was excluded from distribution on fancy grounds so as to enable the landholder to retain the surplus land Benami etc. such cases are liable to reopen under S.45, though the ceiling order became final. The only inbuilt limitation provided in S.45 is that while an appeal is pending before the Appellate Tribunal under S.21, the revisional power under S.45 either suo motu or on an application made by an aggrieved person could not be entertained or continued simultaneously. While the appeal is pending if it comes to the knowledge of the authorities that the declarant suppressed material facts or fraud or collusion, those facts should be placed before the Appellate Tribunal and have it adjudicated property by it or on remand to the primary authority. If after the inquiry or proceedings became final, the higher authorities discovered illegality or impropriety committed in the inquiry or proceedings, action would always be available for initiation by the competent authority and orders could be passed after reasonable opportunity of being heard given to the affected land-holder or person."

In view of the above observations, it is well settled position of law that the judgment or decree obtained by playing fraud on the court or quasi-judicial authority is a nullity and it can be so declared by the competent authority, nobody can be allowed to retain and enjoy the fruits of crime. Even if one or the other beneficiaries was acquitted for want of necessary intention or knowledge about the commission of forgery, still such a

beneficiary could not be allowed to retain the property which was only as a result of the massive fraud, forgery, manipulation and possibly a corruption. In the present matters, it is clear that a massive fraud was committed against the State as well as the original landholders and the poor cultivators who could be allotted some agricultural land out of the surplus land. By committing frauds and by making use of forged and fabricated documents and records the petitioners and their other culprits avoided declaration of about 3750 acres of perennially irrigated land as surplus. The original owners who were holding the lands less than the ceiling limit prescribed by the law would have been entitled to restoration of the some of the lands which would be rendered surplus. Similarly, if whole of the surplus land would not be restored to its original owners, some of it could certainly be allotted to the landless or poor people for cultivation. In the present matter, even though fraud was committed and forged and fabricated records were prepared sometime in 1961-62 or thereafter, it appears that from 1964 itself, complaints about the same were made by the original landholders. It appears that the A.C.B. commenced the investigation but by using their influence with the powers that be, the perpetrators of the crime could delay the investigation for a period of almost 10 years. It

appears that on one hand, the A.C.B. was investigating the cases and charge-sheets were filed and on the other hand, the Special Divisional Officer holding the appellate powers under the Ceiling Act dismissed the appeals on the basis of record, which was forged and fabricated and on the basis of which culprits were convicted. In view of this, period of limitation prescribed under Section 45(2) can not come in a way of the State Government and can not deter it from invoking its suo motu revisional power, which was absolutely essential to do justice to the poor original landholders and other landless people and to undo the results of the frauds, forgeries and fabrications. Infact, the State Government would be failing in its duties and responsibilities, if it would not exercise its suo motu revisional jurisdiction. Otherwise also as pointed out earlier appeals against the convictions were decided in 1985 and thereafter, the accused persons had preferred Special Leave Petitions which came to be dismissed. If period of limitation is counted from the conclusion of the criminal prosecution, the action taken by the Government appears to be clearly within the limitation of 3 years. The impugned orders passed from 1986 to 1989 to re-open and make enquiries afresh were clearly passed by invoking suo motu revisional power under Section 45(2), though the said section is not

specifically mentioned in the impugned orders, which makes no difference.

18. Taking into consideration the facts and circumstances and the legal position discussed above, we find no substance and merit in the Writ Petition Nos. 797, 798, 799 and 800 of 1991 and they are liable to be dismissed.

19. As far as Writ Petition No.3238 of 1989 is concerned, the petitioners who are the original land holders only seek certain directions for appropriate enquiry and implementation of the orders passed by the Government for fresh enquiry. It appears that initially a Sub Divisional Officer, Pandharpur was designated as a Enquiry Officer for the purpose of Section 14 of the Ceiling Act. According to the petitioners, the Sub Divisional Officer, Pandharpur was over burdened with his other duties and, therefore, it was not possible for him to complete the enquiry within a reasonable time. Further it was pointed out that the records which were seized by the A.C.B. was not being made available to the Enquiry Officer. Therefore, the petitioners sought a direction that an officer of the rank of Collector who should be specially designated and appointed as an Enquiry Officer and he should complete the enquiry

within six months. They further sought a direction for making complete record available to the Enquiry Officer. As per the affidavit filed by Shri Shankar Narayan, the Assistant Collector, Pandharpur, by an order dated 27-9-1991, the Government had modified original orders dated 7-8-1989 and 31-10-1989 and in supersession of those orders, the Government has designated the Assistant Commissioner of Land Records, Pune as Enquiry Officer. It is also pointed out that now the Assistant Commissioner is designated as a Deputy Commissioner of Pune Division. In view of this, we are satisfied that the Deputy Commissioner, Pune Division is sufficiently senior and competent officer to hold such an enquiry. Taking into consideration the huge fraud, forgeries and the large number of people involved in the matter, the Enquiry Officer certainly needs some time. In our opinion, the said Enquiry Officer should not be entrusted with any other official duty so that he may fully concentrate on these enquiries and we may expect that he will complete the same within six months from the date of this order. As far as records are concerned, it is pointed out that records of Special Case Nos.2,5,6 and 7 of 1975 were directed to remain in custody of Special Judge, Solapur as per the order dated 4th June, 1990 in Criminal Application No.814 of 1990, passed by this Court. Those records may be made

available to the Enquiry Officer. The learned Assistant Government Pleader has also brought to our notice that records of some of the matters as required are available with the court and some records could not be traced out but as soon as they were found, they will be produced before the Enquiry Officer. In view of this, Writ Petition No.3238 of 1989 may be disposed off with certain directions.

20. For the aforesaid reasons, Writ Petition Nos.797, 798, 799 and 800 of 1991 are hereby dismissed and Rule discharged.

21. In Writ Petition No.3238 of 1989, respondent nos.1 and 2- the State of Maharashtra and Commissioner, Pune Division are hereby directed not to entrust any other official duty to the Deputy Commissioner, Pune Division, who is designated as Enquiry Officer in these matters so that he may fully concentrate and dispose off these matters as early as possible and preferably within a period of six months from the date of this order. The records lying with the Special Judge, Pandharpur as also other relevant records required in these matters shall be urgently placed and handed over to the Deputy Commissioner, Pune Division designated as Enquiry Officer.

22. Rule made absolute in terms of the aforesaid directions.

(J.H.BHATIA,J.) **(B.H.MARLAPALLE,J.)**